U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 26 2004

IN RE: Petitioner: [redacted]

Beneficiary:

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a deacon. The director determined that the petitioner had not established that the position qualified as that of a religious worker or that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director also determined that the petitioner had failed to establish that it had extended a valid job offer to the beneficiary.

On appeal, the petitioner submits a brief and additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

Pursuant to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations.

Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The petitioner states that the duty of an "ordained deacon" is to assist and conduct worship services in accordance with the Ethiopian Orthodox Church canonical law, assist in the Holy Communion service, and assist with baptism and wedding services, anointing of the sick, and prayer services for the dead. The petitioner states that only an ordained deacon or priest can perform these duties.

In response to the director's request for evidence (RFE) dated December 4, 2002, the petitioner submitted a copy of *The Fetha Nagast*, "The Law of the Kings," which it says is church law. According to the passages submitted, the purpose of the position of ordained deacon is to carry out the orders of the bishop. Although the deacon has "no authority to teach, to baptize, to celebrate mass, or to bless the people," he "shall also serve, instead of the bishop, those people who are sick and have no one to nurse them . . . take care of the people who are secretly needy and shall serve those to whom alms are given." The petitioner also submitted a letter from the Archbishop of the Ethiopian Orthodox Church in the Western Hemisphere, which is the governing body of the petitioner. The Archbishop confirms that the duties of deacon include those identified by the petitioner, and that in its denomination, none of the services listed could be performed without an ordained deacon.

On appeal, the petitioner submits a copy of excerpts from a book entitled *The Ethiopian Orthodox Church*, published by the Ethiopian Orthodox Mission in Addis Ababa. The excerpt describes generally the role and function of the deacon in the denomination, and corroborates that the position is recognized and defined within the petitioner's denomination.

The evidence is sufficient to establish that the proffered position is a religious occupation within the meaning of the regulation.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on July 12, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as an ordained deacon throughout the two-year period immediately preceding that date.

According to the petitioner, the beneficiary has served as an ordained deacon with the petitioner church since February of 2000, working a minimum of 40 hours per week. The petitioner states that it did not pay the beneficiary a salary, but did provide him with an apartment and paid utilities, and provided him with food and pocket money for "small expenses." The petitioner submitted a copy of a month-to-month lease agreement, dated February 1999, and a copy of the historical transactions for electricity services at that address dating from January 2002 to January 2003. A copy of a January 2003 telephone bill does not indicate the address that is being serviced.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

The copy of the lease agreement submitted by the petitioner does not indicate that the leased apartment was for the beneficiary's use. This is underscored by the fact that the apartment was leased almost a full year before the beneficiary began working for the petitioner and the fact that this is the address used by [redacted] on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit. The petitioner submits no evidence of any other compensation that it provided to the beneficiary, such as vouchers for payment of food or expenses. The record does not clearly establish that the beneficiary did not depend on secular employment for financial support during the relevant two-year period.

The record does not establish that the beneficiary worked continuously as a deacon for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In its response to the RFE, the petitioner stated that, in the past, it had "borrowed" ordained deacons from its sister churches, in order to perform its services. The director determined that the petitioner had not established that it has ever had the need for a full-time salaried ordained deacon.

The petitioner stated that it is a small, relatively new church that is gradually becoming self-sufficient, and that it had been difficult to conduct services with borrowed deacons, especially as other churches had a shortage of liturgical staff.

Nonetheless, the record does not reflect that the petitioner has any paid employees. The fact that the petitioner proposes now to pay the beneficiary, although he has been apparently unsalaried since he became associated with the petitioner, raises questions as to the validity of the job offer. Although the petitioner states the beneficiary has worked a minimum of 40 hours per week, it provides no corroborative evidence of this. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, it is unlikely that the petitioner used "borrowed" ordained deacons in a full-time capacity. The

petitioner has not adequately established that the needs of the petitioning entity will provide permanent, full-time religious work for the beneficiary.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the proffered salary. This deficiency constitutes an additional ground for dismissal of the appeal.

The regulation at 8 C.F.R. § 204.5(g)(2), which states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner states that it intends to pay the beneficiary $200.00 per week in addition to maintaining the apartment it states it currently rents for him. To establish its ability to pay the proffered salary, the petitioner submitted copies of balances in its various bank accounts as reflected by an Internet inquiry in February 2003. It also included a copy of its financial statement as of December 31, 2002. Although the document indicates that it is an audited financial statement, the certified public accountant's introductory statement makes it clear that the report is simply a review, and that the information contained in the documents are based on the representations of management.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.